

STATE OF MICHIGAN
IN THE SUPREME COURT

IN RE REQUEST FOR
ADVISORY OPINION REGARDING
CONSTITUTIONALITY OF 2011 PA 38.

Supreme Court No. 143157

The appeal involves a ruling
that a provision of the
Constitution, a statute, rule or
regulation, or other State
governmental action is invalid.

**REPLY BRIEF OF ATTORNEY GENERAL BILL SCHUETTE
IN SUPPORT OF THE VALIDITY OF 2011 PA 38**

ORAL ARGUMENT REQUESTED

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REPLY ARGUMENT IN SUPPORT OF 2011 PA 38

I. There is no perpetual tax exemption for public pension distributions.

A. Article 9, § 24 does not incorporate MCL 206.30, the Income Tax Code's tax exemption for public pension distributions.

The Attorney General (AG) brief in opposition argues that § 24's scope—the “accrued financial benefits” of a “pension plan and retirement system”—somehow includes the Michigan Tax Code's historical exemption of pension distributions in MCL 206.30. (AG Br in Opp at 16-27; accord American Association of Retired Persons (AARP) *Amici* Br at 45.) Not so. “[T]here is a definite legal distinction between reducing the rate of a pension and levying a tax upon the income received from that pension.” *Herrick v Lindley*, 391 NE2d 729, 733 (Ohio, 1979).

Under Michigan law, “monetary payments for past services” are a retiree's accrued financial benefit that cannot be diminished or impaired. *Studier v Mich Pub Sch Employees' Ret Bd*, 472 Mich 642, 658; 698 NW2d 350 (2005). In contrast, an “income tax is an assessment upon the income of the person and not upon any particular property from which that income is derived.” *Shivel v Vidro*, 295 Mich 10, 19; 294 NW 78 (1940) (quotation omitted). Here, the “accrued financial benefit” is the property from which the taxable income is derived. That legal distinction explains why, when a Michigan public employee retires and moves out of state, any Michigan personal-income-tax obligation ceases, but the government obligation to pay 100% of the pension benefit remains.¹ (AG Br in Support at 20-21.)

¹ That is also why the National Union of Public and General Employees does not list “tax effects” in its 11-page checklist describing the key elements of a “pension plan.” <http://bit.ly/nmlesU> (listing 21 elements, such as eligibility and a payment formula).

Article 9, § 24's plain language draws this same distinction. Under § 24, the only "contractual obligation" that cannot be diminished or impaired is the "accrued financial benefit[]" of each "pension plan and retirement system." "[A]ccrued financial benefits" are "monetary payment for past services." *Studier*, 472 Mich at 658. But a tax exemption is not a "monetary payment." It reduces a Michigan resident's base income subject to taxation. If "accrued financial benefits" included a tax exemption, then § 24's second sentence would require a public employer to fund that exemption benefit (the lost tax revenue) annually, a requirement no one has ever demanded, that would be impossible to implement, and that could be created only with an absurd construction of article 9, § 24. (AG Br in Support at 25-26.)

Former Attorney General Frank Kelley reached this very conclusion in OAG 6697, reasoning that § 24 had nothing to do with the Income Tax Act:

[I]t is clear that [MCL 206.30] cannot be a contractual obligation protected by Const 1963, art 9, Sec. 24. . . . The Income Tax Act of 1967 establishes and is intended to regulate *solely* a system for income taxation. The amendment of such act to provide for a general exemption for all public pension plan benefits post-dated and was in no way directly connected with the statutory establishment of the various public retirement plans. [OAG, 1991-1992, No 6697, p 3.]

It is legally incorrect to read article 9, § 24 as "constitutionalizing" MCL 206.30.

B. Nor does Article 9, § 24 incorporate the tax-exemption provisions of the various public-employee retirement acts.

The AG brief in opposition and the AARP *amici* brief also argue that § 24 incorporates the tax exemption provisions of any act establishing a pension plan. In support, both briefs rely on the Constitutional Convention comments of delegate Van Dusen that an employee "has the right to receive those benefits under the

terms of the statute or ordinance prescribing the plan.” (AG Br in Opp at 30; AARP Amici Br at 18 n 12.) But both briefs omit Van Dusen’s clarifying statement, made only two pages later in the Convention record, that the phrase “accrued financial benefits” in § 24 was intended: (1) to *limit* public-employee contract rights to a retirement act’s deferred-compensation element, apparently including pension systems such as those at issue here, and (2) to *exclude* a public employee’s attempt to make any other claim regarding an act’s benefit structure:

[T]he words ‘accrued financial benefits’ were used designedly, so that the contractual right of the employee *would be limited to the deferred compensation embodied in any pension plan*, and that we hope to avoid thereby a proliferation of litigation by individual participants in retirement systems talking about *the general benefits structure*, or something other than his specific right *to receive benefits*. [Const Convention 1961, Official Record, Vol I, p 773-774 (emphasis added).]

Thus, even if one ignores the legal distinction between a contract obligation on the one hand and the state income tax on the other, there is no evidence that § 24’s drafters and ratifiers intended the provision to protect anything other than the deferred pension payment itself. And absent a clear statement that public employees have a constitutional right to a perpetual income-tax exemption for pension distributions, article 9, § 2 prohibits the courts from implying such a right.

C. The various public-employee retirement acts do not actually exempt public pension distributions from state income tax.

It is also wrong for the AG brief in opposition and the AARP to assume that the tax-exemption provisions of the various retirement acts created a perpetual income-tax exemption. There was no state income tax until 1967, so the four pre-1967 retirement-act exemptions could not have been directed at shielding pension

distributions from personal income tax. (AG Br in Support at 23.) Had that been the intent, the statutory language would have exempted from taxation “distributions,” or monies “paid” or “received.”

The pre-1967 exemptions were actually responsive to an act that taxed intangible personal property, including all manner of cash and investment assets, and which exempted pensions receivable from the United States, but not from Michigan. (1939 PA 301, §§ 1(b), (d), 2, 3(b)(8), attached as Ex A.) Accordingly, the four pre-1967 retirement acts exempt only benefits “accrued or accruing” or “payable.” State Employees’ Retirement Act of 1943, MCL 38.40(1) (exempting pension rights “accrued or accruing”); Public School Employees Retirement System Act of 1945, MCL 38.1346(1) (same); Michigan Legislative Retirement System Act of 1957, MCL 38.1057(1) (exempting benefits “payable” under the act); City Library Employees’ Retirement System Act of 1927, MCL 38.705 (same).

The intent of this language is best understood in contrast to the Judges Retirement Act, MCL 38.2670(1), which post-dates the 1967 state income tax and comes closest to creating a perpetual income tax exemption. In that Act, the Legislature said that “*distributions*” from a public pension plan are tax exempt. No such language appears in the other retirement acts’ exemption provisions. Thus, Public Act 38’s companion acts did not have to repeal those exemptions, but merely reaffirm—using the same terminology as the Judges Retirement Act—that *distributions* are subject to tax. E.g., MCL 38.40(2) (right of a person to a pension “is subject to state tax *upon distribution*”) (emphasis added); MCL 38.1346(2)

(same); MCL 38.1057(2) (“subject to taxation by this state *upon distribution*”)

(emphasis added); MCL 38.2670(2) (“*distributions . . . are subject to state tax*”)

(emphasis added).²

Finally, if the tax-exemption language used in the four pre-1963 public retirement acts truly extended to pension distributions, adoption of the Income Tax Act’s general exemption, MCL 206.30(1)(f), would have been unnecessary; it should have applied only to public employees not already covered by the tax exemptions of the four retirement acts. For all these reasons, there is no basis to interpret the plain language of the provisions of the pension-system statutes, the Income Tax Act, or the Michigan Constitution as a permanent bar against personal income taxes; instead, all these authorities support the opposite conclusion.

II. 2011 PA 38 does not violate the Contracts Clause.

Public Act 38’s validity under either Contracts Clause is entirely derivative of the § 24 issue, i.e., whether public employees have a contractual right to a perpetual tax exemption for pension distributions. Because there is no such right, Public Act 38 cannot violate the Contract Clause. (AG Br in Support at 27-32.)

This point is amplified by the AG opposition brief’s reliance on *Hughes v State of Oregon*, 838 P2d 1018 (Or, 1992). (AG Br in Opp at 31, 39-40.) *Hughes* held that Oregon’s decision to eliminate a public-pension exemption violated the Contracts Clause. (AG Br in Opp at 39.) But that is because Oregon’s constitution

² Because annuities have different tax consequences than ordinary income, MCL 38.705 reads differently. MCL 38.705(2) (“annuities . . . are subject to state taxes”).

contained no provision like Michigan’s article 9, § 2, which would have prohibited Oregon from contracting away its taxation power. Many more state supreme courts, interpreting state constitutions with provisions like article 9, § 2, have rejected Contracts Clause challenges to statutes eliminating public-pension exemptions. (AG Br in Support at 30-31 n13; AG Br in Opp at 39 (citing Colorado, Georgia, Maine, New Mexico, Ohio, and Rhode Island decisions upholding legislative acts abolishing statutory pension-distribution exemptions).)

III. Article 9, § 7’s proscription against an income tax “graduated as to rate or base,” does not prohibit a flat income tax with reasonable exemptions.

The AG opposition brief asserts that Michigan courts have not defined the terms “graduated tax rate” or “graduated tax base” in article 9, §7. (AG Br in Opp at 42.) That is incorrect. See *Kuhn v Dept of Treasury*, 384 Mich 378, 388-389; 183 NW2d 796 (1971) (defining “graduated tax rate”).

Kuhn explained article 9, § 7’s meaning in two parts. First, § 7’s prohibition “applies only to *different rates of tax on different segments of taxable income of the person being taxed.*” 384 Mich at 388-389 (emphasis added). In other words, § 7 does not prohibit a different *effective* tax rate for *different* taxpayers, but different *marginal* tax rates for different segments of the *same* taxpayer’s income. “Undoubtedly what the drafters and adopters of [§ 7] had in mind was the graduated scheme of the Federal income tax in which rates increase as taxable income does.” *Id.* at 389. (AG Br in Support at 9 (showing the multi-bracket federal income-tax system in existence in 1961, when the framers drafted and approved § 7).) Thus, in *Kuhn*,

this Court held that the “designation of three types of taxpayers with different applicable rates to each” does not violate article 9, § 7. 384 Mich at 389. This is why no court has invalidated the Uniform City Income Tax Act, which likewise has a low-income qualifier for an additional personal exemption. MCL 141.631(3). (The AG brief in opposition is wrong when it argues, on page 2, that there “are no other exemptions or deductions in Michigan for which is [sic] based on income.”)

Second, *Kuhn* held that § 7 “does not prohibit the exclusion or exemption from the definition of taxable income of a portion of the taxed person’s receipts.” 384 Mich at 389. This holding is consistent with the ratifiers’ intent: “A flat rate income tax is clearly permitted [under § 7] . . . [and t]he legislature could prescribe reasonable exemptions for a flat tax rate.” (Const Convention 1961, Official Record, Vol II, p 3399.) Accordingly, a “difference in exemptions or exclusions” among different classes of taxpayers “does not violate art. 9, § 7,” either. *Kuhn*, 384 Mich at 389.

Kuhn does not define the phrase “graduated tax base,” and there is no common definition of the phrase. So the best evidence of the ratifiers’ intent is the Address to the People and the Convention Comments. Both of those sources demonstrate that the phrase “graduated tax base” prevents “piggyback” taxation, where the state imposes a flat tax based on federal tax *liability* (e.g., 1.5% x federal tax liability), thus incorporating the federal tax structure’s graduated-rate scheme. (AG Br in Support at 10.)

Public Act 38 does not create a graduated tax rate or base. Under both the pension-distribution exemption and the personal exemption, an individual taxpayer pays only one rate—4.35%—on all non-exempted income. In other words, as under current law, once taxable income is calculated, the only step remaining is to multiply it by the state’s flat-tax rate. Taxable income is not divided into tiers and subjected to base multipliers before this calculation, as it is in the federal tax system.³ The ratifiers of the 1963 Constitution did not intend to prohibit the system that Public Act 38 creates. (AG Br in Support at 33-39.)

Tellingly, the AARP and the various associations of retired public employees do not even argue that Public Act 38 violates article 9, § 7. And the argument in the AG brief in opposition is based on a flawed premise: that article 9, § 7 somehow prohibits *different* taxpayers from paying different *effective* rates. (E.g., AG Br in Opp at 2, 43, 44, 45 (arguing that different effective rates for different taxpayers creates a graduated base)).

That argument cannot be reconciled with *Kuhn*, nor with the Convention Records, which state that a flat-rate income tax could “be imposed on income computed for federal tax purposes.” (Const Convention 1961, Official Record, Vol I, p 854.) Because federal adjusted gross income is determined only after calculation of numerous income-based exemptions and deductions (such as the Social Security exemption), § 7’s drafters could not have been concerned about income-based

³ To fully appreciate the difference, consider how a taxpayer with \$50,000 in taxable income would have calculated her taxes using the 1961 schedule reprinted at page 9 of the initial AG supporting brief: $(\$4,000 \times .43) + (\$4,000 \times .47) + (\$4,000 \times .50) + (\$4,000 \times .53) + (\$4,000 \times .56) + (\$6,000 \times .59) = \$13,500$.

exemptions. Section 7 only prohibits: (1) multi-rate brackets for different segments of a single taxpayer's income, and (2) a flat-tax base that uses federal tax *liability* (and thus its underlying graduated tax) as the starting point.

The argument advanced in the AG opposition brief cannot be reconciled with existing tax practice. Under current law, taxpayers with the same adjusted gross income can have different effective rates based on the amount of exemptions and deductions for which they qualify. If article 9, § 7 prohibits different taxpayers from paying different effective tax rates, even the most basic personal exemption scheme—say a \$1,000 exemption for each dependent—would be unconstitutional, because it results in different effective rates for taxpayers with and without children. That is the exact opposite of the ratifiers' intent. (AG Br in Support at 33-38.)

Finally, eligibility for Public Act 38's tax exemptions does not depend on income level. (Contra AG Br in Opp at 42 ("the Legislature has, for the first time, unconstitutionally conditioned entitlement to a tax exemption or deduction on income level").) Eligibility turns on age and total household resources, neither of which equals income. That reality is what makes it possible for a student to lose the exemption while another person, with far greater wages, is eligible for the full exemption. (AG Br in Support at 39.) Public Act 38 does not violate article 9, § 7.

IV. Public Act 38 passes equal-protection scrutiny.

The AARP *amici* brief does not argue that equal-protection principles prohibit Public Act 38 from using date of birth to determine eligibility for a pension exemption. That silence is with good reason; the Act easily satisfies minimal

rational-basis review, because the Legislature drew lines rationally related to a legitimate governmental interest: protecting retirees who, because of their age, will have more difficulty absorbing the tax change.⁴ (AG Br in Support at 40-42.) Public Act 38's opponents cannot satisfy their burden of proving that the Act's tax classifications are a "hostile and oppressive discrimination against particular persons and classes." *San Antonio Indep School Dist v Rodriguez*, 411 US 1, 41 (1973).

The AG opposition brief argues that strict scrutiny applies because public pensioners have a "fundamental right" to a perpetual income-tax exemption. (AG Br in Opp at 53-57.) But as explained in Section I, *supra*, and pages 18-27 of the initial AG brief in support, there is no such right, much less a fundamental right. Accordingly, rational basis applies, and Public Act 38 easily survives.

CONCLUSION AND RELIEF SOUGHT

Public Act 38 is constitutional in all respects. Accordingly, the Governor and a majority of the members of the Legislature respectfully request that this Court declare 2011 PA 38 valid. Even if the framers had written article 9, § 24 expressly to protect tax provisions contained in a public-employee retirement act, the only act that comes close to exempting pension-plan "*distributions*" from taxation is the one applicable to Michigan judges, and the Court's holding should be so limited.

⁴ The AG brief in opposition also argues that Public Act 38 violates equal protection because it draws classifications based on marital status. (AG Br in Opp at 58.) That is not accurate, because the Act does not differentiate between a married and an unmarried taxpayer. The Act draws lines based on age of the taxpayer or the taxpayer's spouse. Either way, the issue is classification based on age. In any event, classification based on marital status only receives strict scrutiny if a law impacts the marriage relationship itself. There is no such claim here.

Respectfully submitted,

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Exhibit A

the closing of the estate: *Provided further*, That no other or additional proof or publication shall be required for the purposes of escheat under the provisions of this act except as herein provided.

Sec. 23. [26.1051] **Indemnification of depository; proof of loss, payment,**

Sec. 23. Where money, securities or other personal property are paid over or delivered to an administrator pursuant to the preceding sections of this act, and any such person, copartnership, company, bank, trust company or corporation paying such money or delivering such securities or property are thereafter required to carry and perform their contract of deposit with the person or the heirs or assigns of the person making such deposit, or the person in whose name such property was held, possessed or controlled, as provided in this act, the state of Michigan shall indemnify and pay to such person, copartnership, company, bank, trust company or corporation, the amount of damage or loss which they may have sustained providing satisfactory proof thereof is made to the board of state auditors of the state of Michigan, which board of state auditors shall allow the amount they find to be due to the auditor general, who shall thereupon draw his warrant for such amount on the state treasurer, who shall pay the same out of any moneys in the state treasury not otherwise appropriated.

Approved June 20, 1939.

[No. 301.]

AN ACT to provide for the imposition and the collection of a specific tax upon the ownership of intangible personal property; to provide for the disposition of the proceeds thereof; to prescribe the powers and duties of the state tax commission with respect thereto, to prescribe penalties; to make an appropriation to carry out the provisions of this act; and to repeal all acts and parts of acts inconsistent with the provisions of this act.

The People of the State of Michigan enact:

[7.555(1)] **Intangible tax act; definitions.**

Section 1. Definitions. That when used in this act:

(a) The term "person" means any individual, firm, copartnership, joint adventure, association, corporation, company, estate, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context. The term does not include public corporations;

(b) The term "intangible personal property" means accounts receivable, monies on hand or on deposit or in transit, interest bearing obligations for the payment of money, including bonds, certificates of indebtedness, debentures, notes, and certificates of deposit, either secured or unsecured, annuities, royalties, shares of stock in corporations, associations, and joint stock companies, certificates of ownership in enterprises conducted for profit, (not, however, including partnership agreements,) equitable interests in any of the foregoing classes of intangible property, and any and all other credits and evidences of indebtedness.

(c) The term "tsfrs" of intangible personal property for the purpose of taxation under the provisions of this act shall be the domicile of the owner or claimant thereof, except that any intangible personal property, not otherwise exempt under the laws of this state, owned by a person having his domicile outside of this state but used in connection with business carried on or transacted in Michigan, or placed in the hands of a trustee, manager or agent with power of investment or reinvestment in Michigan, shall be deemed to have a situs at the place of business within this state. Intangible personal property owned by a person domiciled in Michigan, but used in connection with business carried on or transacted outside of this state and being taxed at the place where such business is carried on or transacted shall not be deemed to have a situs in this state.

(d) The term "income" includes: (1) interest received upon intangible personal property; (2) dividends and other distributions, whether in the form of cash or property, to the extent that they represent the yield of intangible personal property; *Provided, however, that the term "income" shall not include distributions of capital, whether in liquidation or otherwise; And provided further, that if in deriving income from intangible personal property the taxpayer in the regular course of business incurs expense in creating, acquiring, managing, enforcing, or disposing of such intangible personal property, such expense to the extent that it is reasonably necessary may be deducted from income for the purpose of the tax hereinafter imposed.*

(e) The term "tax year" or "taxable year" means the calendar year, or the taxpayer's fiscal year when permission is obtained by him from the commission to use his fiscal year as the tax period in lieu thereof.

(f) The word "commission" means the state tax commission of Michigan: *Provided, That if and when a department of revenue of the state of Michigan shall be established the word "commission" shall mean such department of revenue.*

[No. 300.]

AN ACT to authorize township boards to transfer to county park trustees or title to, or to arrange with county park trustees to improve, maintain, manage and control any lands held for park purposes by any township, including all public places vested in any township by virtue of the dedication of any plat duly approved and recorded according to law.

The People of the State of Michigan enact:

[5.2438] **Township parks; conveyance to board of county park trustees or arrangement for maintenance by board.**

Section 1. That the township board of any township is hereby authorized to transfer and convey to the board of county park trustees of any county in which said township is located the title to any lands held by such township for park purposes, including any lands acquired by such township through the dedication of any plat duly approved and recorded, or to arrange with said board of county park trustees for the improvement, maintenance, management and control of any such lands, and upon the acceptance by the county park trustees of any such transfer and conveyance, or upon the making of any such arrangement for the care, management and control, the said county park trustees shall be charged with all the duties relating thereto as are provided by Act No. 90 of the Public Acts of 1913, as amended, relating to parks and other public places.

Approved June 29, 1939.

(g) The word "taxpayer" means any person liable for any tax hereunder.
 (h) The word "tax" means all taxes, interest or penalties, levied under this act.

(i) The word "owner" means the owner of the beneficial interest in intangible personal property, if such interest is subject to present possession or enjoyment; if such interest is not subject to present possession or enjoyment, the term "owner" means the owner of the legal title of such intangible personal property. If the ownership is divided between present and future interests the owner of the present interest shall be deemed the owner. In case of intangible personal property in receivership the receiver shall be deemed the owner.

[7.556(2)] Imposition of tax; rates; exemption from general property tax.
 Sec. 2. Imposition of the tax. For the calendar year 1940, and for each year thereafter there is hereby levied upon each owner of intangible personal property not hereinafter exempted having a situs within this state, and there shall be collected from such owner an annual specific tax on each item of such property owned by him. The tax on income producing intangible personal property shall be 6 per cent of the income but in no event less than one-tenth of 1 per cent nor more than three-tenths of 1 per cent of the face or par value of each item (or in the case of corporate stock or other evidence of corporate ownership having no par or face value, of the average per share contribution to capital, surplus and other funds in consideration of which all of the then outstanding shares of stock of the same class of such corporation shall have been issued). The tax on non-income producing intangible personal property shall be one-tenth of 1 per cent of said face, par or contributed value. The value for the purpose of this section, of any item of property the value of which changes during the year shall be the average value to be computed under such rules and regulations as the commission may adopt. If any item of intangible personal property subject to tax under this subsection is owned by the taxpayer for only a portion of the calendar year the tax levied hereunder shall be reduced in proportion.

Intangible personal property subject to tax under this act shall be exempt from all general property taxes under the laws of this state.

[7.556(3)] Deductions and exemptions.

Sec. 3. Deductions and exemptions. (a) In computing the tax imposed under this act for any tax year the following deductions may be made:

(1) From the total tax as computed in accordance with section 2, the sum of \$87.00;

(2) From accounts receivable, including notes given in lieu thereof, subject to tax under this act, accounts payable by the taxpayer, including notes given in lieu thereof, if such accounts payable or notes are incurred or given in connection with the business from which the accounts receivable or notes in lieu thereof are derived.

(b) The following shall be exempt from the tax imposed by this act:

(1) Mortgages and land contracts and the evidences of indebtedness secured thereby upon which the specific tax imposed by act number 91 of the public acts of 1911, as amended, being sections 3640 to 3649, inclusive, of the compiled laws of 1929, has been paid prior to the effective date of this act;

(2) Bonds, notes, debts or written or printed obligations upon which the specific tax imposed by act number 142 of the public acts of 1913, as amended,

being sections 3654 to 3658, inclusive, of the compiled laws of 1929, has been paid prior to the effective date of this act;

(3) Bonds or other obligations of the state of Michigan, or of any political subdivision thereof;

(4) Bonds or other obligations of the United States, or guaranteed as to principal or interest by the United States. The term "United States" shall be construed to mean and include any possessions, agencies or instrumentalities of the United States;

(5) Bonds, mortgages and other certificates of indebtedness made and issued by any municipality, organization or private individual for the purpose of erecting armories in this state;

(6) Intangible personal property belonging to benevolent, charitable, religious, educational, and scientific institutions incorporated under the laws of this state: *Provided*, That such exemption shall not apply to secret or fraternal societies; but the intangible personal property of charitable homes of such societies shall be exempt;

(7) Intangible personal property belonging to posts of the Grand Army of the Republic, sons of veterans' unions, and of the women's relief corps connected therewith, of all Young Men's Christian Associations, Young Women's Christian Associations, Women's Christian Temperance Union associations, Young People's Christian Unions, and other similar associations;

(8) Pensions receivable from the United States;

(9) Intangible personal property belonging to foreign insurance companies paying the specific tax under section 17 of chapter 2 of part 2 of act number 256 of the public acts of 1917, being section 12327 of the compiled laws of 1929, as amended, domestic insurance companies and annuity companies which provide a reserve to retire their certificates at, or prior to the time of maturity, exempt or taxable under the provisions of act number 206 of the public acts of 1893, as last amended;

(10) Intangible personal property belonging to railroad companies, union station and depot companies, telegraph companies, telephone companies, sleeping car companies, express companies, car loaning companies, stock car companies, refrigerator car companies, fast freight companies, and all other companies paying the tax assessed and levied under act number 282 of the public acts of 1905, as amended;

(11) Intangible personal property belonging to banks, building and loan associations, savings and loan associations and trust companies doing business in this state under whatever authority organized;

(12) Intangible personal property belonging to partners in any firm or copartnership to the extent of intangible personal property with respect to which the partnership has paid the tax as provided in this act;

(12a). Intangible personal property belonging to credit unions doing business in this state under whatever authority organized;

(13) That proportion of each share of capital stock owned by a taxpayer or of the dividends on such share of stock which the corporation's property both tangible and intangible owned or used in Michigan is of the entire property of such corporation wheresoever located;

(14) Intangible personal property which represents other property taxed under this act or other laws of this state and is so closely identified therewith that to impose an additional tax under this act would be unconstitutional as double taxation;

(15) Time, savings and demand deposits in banks up to the amount of \$3,000.00 for each taxpayer.

(c) Shares of stock in banks, building and loan associations and savings and loan associations and trust companies.

(1) All shares of stock in banks, building and loan associations and savings and loan associations and trust companies doing business in this state under whatsoever authority organized shall, irrespective of the domicile of the owner thereof, be deemed to have a situs in this state for the purposes hereof and shall be subject to the tax imposed under this act. The tax thereon shall be computed in like manner as that imposed on other shares of stock subject to tax under this act: *Provided*, however, That in determining the extent of the exemption of each such share under the provisions of subsection (b), subdivision (13) of section 3 hereof, there shall be exempt only that proportion of each such share or of the dividends thereon which the total of the tangible property of such bank, loan association or trust company which is taxable to it in this state and the intangible property thereof of a character which is exempt under the provisions of subsection (b), subdivisions (1), (2), (3), (4), (5), (13) and (14) of section 3 hereof is of the entire property of such bank, loan association or trust company.

Each such bank or trust company shall on or before 60 days after the end of the tax year make a verified return in form and content as prescribed by the commission showing the amount of dividends, if any, paid on its shares during the preceding calendar year, the amount of capital and surplus represented by each share and its computation of the tax payable with respect to its shares for the preceding year. It may under rules and regulations prescribed by the commission transmit with such return, as agent for the owners of such shares, a remittance covering the amount of such tax. The amount so remitted may be charged against the shares so taxed.

[7.556(4)] Annual return of taxpayers; contents; payment of tax.

Sec. 4. Annual return; payment of tax, fiscal year. On or before 60 days after the end of the tax year each person owning intangible personal property subject to tax under this act shall make a return in form and content as prescribed by the commission, showing the personal property subject to taxation hereunder for the preceding tax year and showing the face, par, or contribution value of each item of such property. He shall transmit the return to the commission with his remittance covering the tax payable by him for the preceding tax year. Such return shall be verified by the oath of the taxpayer, or his duly authorized agent. The commission, for good cause shown, may, on the application of any taxpayer, extend the time by not more than 90 days for making the annual return.

In the annual return each person shall also list separately, and in the name of his principal, all intangible personal property held by him for investment or reinvestment as agent, trustee, manager, or attorney, or on account of any other person, and all moneys deposited subject to his order, check, or draft, and credits due him.

[7.556(5)] Determination of tax; deficiency assessments; method of service of notice.

Sec. 5. Examination of returns; determination of tax; deficiency assessments. As soon as practicable after each return is filed the commission shall examine it. If it then appears that the correct amount of the tax is greater or less than that shown in the return, the tax shall be recomputed and the correct tax determined. In case of failure of the taxpayer to set forth any of the data required in the return, the commission may resort to any available evidence thereof. In case the contribution value of corporate stock having no par value is not furnished by the taxpayer, the commission may calculate the same from figures appearing in any report put out by such corporation or in any recognized securities manual, or, if neither of the foregoing

ing shall be obtainable, then any other evidence which shall be obtainable by the commission.

If the amount paid exceeds that which should have been paid on the basis of the tax so recomputed, the excess so paid shall be returned when discovered by the state, regardless of any request for refund being filed by the taxpayer. If the amount paid is less than the amount which should have been paid, the deficiency, together with interest thereon at the rate of one-half of 1 per centum per month from the time the tax was due, shall become due and payable after notice and hearing as herein provided.

If any part of the deficiency is due to negligent or intentional disregard of this act, or of the authorized rules and regulations of the commission, but without intent to defraud, there shall be added as a penalty 10 per centum of the total amount of the deficiency in the tax, and interest shall be collected at the rate of 1 per centum per month on the amount of such deficiency in the tax from the time it was due, which interest and penalty shall become due and payable after notice and hearing as herein provided.

If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty 100 per centum of such deficiency and, in such a case, the whole amount of tax unpaid, together with the penalty, shall become due and payable after notice and hearing as herein provided, and an additional 1 per centum per month of the tax shall be added from the date such tax was due until paid.

Whenever notice is required under the provisions of this act, such notice shall be given either by personal service or by registered mail addressed to the last known address of the taxpayer.

No deficiency, interest or penalty shall be assessed for any year after the expiration of 3 years from the date set for the filing of the annual return for such year, except in cases of fraud.

[7.556(6)] Remittances, payment by person having custody of property; disposition of revenue.

Sec. 6. Remittances; disposition of revenue. All remittances of taxes, interest, and penalties imposed by this act shall be made to the commission by bank draft, check, cashier's check, money order, certificate of deposit, or money. Any person having intangible personal property of another in his custody or on deposit may, pursuant to regulations adopted by the commission, pay the tax imposed thereon under this act and payments so made shall be credited to the owner, and may be charged against the property of the owner. When deemed necessary for the effective administration of this act, the commission may, under appropriate rules and regulations, require any such person to pay on behalf of the owner the tax imposed hereunder upon owners of intangible personal property left in custody or on deposit as aforesaid. Any sums so paid on behalf of the owner may be deducted by him in making his return. If in any case it shall be made to appear to the commission that the amount paid in accordance with this provision is in excess of the amount which should have been paid under sections 2 and 3 hereof, refund shall be made. No remittance other than cash shall be a final discharge of liability for the tax herein imposed and levied unless and until such remittance has been paid in cash. The commission shall forthwith deposit all monies received in the state treasury. After the payment of the necessary expenses in carrying out the provisions of this act and in allowing for refunds, one-third of the moneys so received shall be credited to the general fund of the state and two-thirds shall be distributed among the several counties and cities of the state as hereinafter provided. The commission shall compute and certify to the auditor general the sum to be paid to each county and to each city, and

the auditor general shall draw his warrants accordingly upon the state treasurer. The commission shall certify to the auditor general for payment to each city a sum bearing the same proportion to the total sum distributed to cities and counties as the population of such city bears to the population of the entire state, and it shall certify to the auditor general for payment to each county a sum bearing the same proportion to the total sum distributed to cities and counties as the population of such county exclusive of residents of cities bears to the population of the entire state. In arriving at such certifications the commission shall employ the last federal census. Payments shall be directed to the respective treasurers of the several counties and cities, and be credited to the general or contingent funds of such cities and counties, to be used for the purposes for which such funds are available.

[7.556(7)] Failure to make return; assessment of tax by commission; penalty.

Sec. 7. Failure to make return. If any person fails or refuses to file a return, the commission shall proceed to assess the tax as hereinafter provided. In case of wilful failure to file any return required by this act, within the time prescribed by this act, 25 per centum of the tax shall be added as a penalty.

[7.556(8)]. Collection of tax due state, levy and sale under warrant; action at law.

Sec. 8. Tax debt due state; collection. (a) If the tax imposed by this act is not paid on the date the same is required to be paid under the provisions of this act, the commission, or some person designated by it, may cause a demand to be made on the taxpayer for the payment thereof. If such tax remains unpaid for 10 days after such demand has been made and no proceedings have been taken to review the same, the commission may issue a warrant under the official seal of its office, directed to the sheriff of any county of the state or to any state officer authorized to serve process, commanding said sheriff or other officer to levy upon and sell any real or personal property of the taxpayer, found within his jurisdiction, for the payment of the amount thereof with the added penalties, interest and the cost of executing the warrant. Such warrant shall be returned to the commission together with the money collected by virtue thereof, within the time therein specified, which shall not be more than 90 days from the date of the warrant. The sheriff or other officer to whom such warrant shall be directed shall proceed upon the same in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against property upon judgments by a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. The state of Michigan, through the commission or some officer or agent designated by it, is hereby authorized to bid for and purchase any property sold under the provisions hereof. In such case the commission is authorized to dispose of such property to the best advantage, and after deducting the amount of the tax, interest and penalties, and all costs of the commission with respect to the acquisition and sale of such property, shall return the surplus to the taxpayer.

(b) In addition to the mode of collection provided herein, the commission may bring an action at law in the county in which the intangible personal property, on which the tax was imposed under this act, has a situs or business situs to collect and recover the amount of taxes, interest and penalties due on such property by the taxpayer.

[7.556(9)] Jeopardy assessment; grounds, procedure. Sec. 9. Jeopardy assessment. If the commission finds that a person liable for tax under any provisions of this act designs quickly to depart from the

state or to remove his intangible personal property therefrom, or to conceal himself or his intangible personal property therein, or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect such tax unless proceedings be brought without delay, the commission shall cause notice of such facting to be given such person, together with a demand for an immediate return and immediate payment of such tax. Thereupon such tax shall become immediately due and payable. If such person (1) is not in default in making any return or paying any tax prescribed by this act, and (2) furnishes evidence satisfactory to the commission under regulations to be prescribed by the commission, that he will duly return and pay the tax to which the commission's finding relates, then such tax shall not be payable prior to the time otherwise fixed for payment.

[7.556(10)] Duty of taxpayer to keep records and render statements and returns; rules and regulations.

Sec. 10. Records and special returns. Every person, liable to any tax imposed by this act, shall keep such records, render under oath such statements, make such returns, and comply with such rules and regulations, as the commission may, from time to time, prescribe. Whenever in the judgment of the commission it is necessary, it may require any person, by notice served upon him, to make a return, render under oath such statements, or keep such records, as the commission deems sufficient to show whether or not such person is liable to tax under this act.

[7.556(11)] Examination of records by commission; witnesses, subpoena, enforcement; incriminating testimony.

Sec. 11. Examination of records and witnesses; subpoena. The commission may by itself, or its duly appointed agents, examine the books, records and papers of any person subject to taxation under this act. Any member of the commission may issue a subpoena on behalf of the commission requiring any person to appear before the commission and be examined with reference to any matter within the scope of such examination, and to produce books, records or papers. Any member of the commission may administer an oath to a witness in connection with any matter so before the commission. In case of disobedience of a subpoena, the commission may invoke the aid of any circuit court of the state of Michigan within the jurisdiction of which any such examination is being carried on and such court shall, in case of contumacy or refusal to obey a subpoena, issue an order requiring such person to appear before said commission and to produce books, records, and papers if so ordered and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

No person shall be excused from testifying or from producing any books, papers, records, or memoranda in any examination when ordered to do so by the commission, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a criminal penalty; but no person shall be prosecuted on account of any transaction concerning which he is compelled to give testimony pursuant to this section. No person so testifying shall be exempt from prosecution and punishment for perjury committed in giving testimony.

[7.556(12)] State tax commission; powers and duties, rules and regulations; information confidential.

Sec. 12. Commission; powers and duties, reports, confidential information. The administration of the provisions of this act is hereby vested in the state tax commission, which is hereby authorized to promulgate such rules and regulations as may be necessary in the administration of this act, including any

necessary formula for allocation to the state of intangible personal property used in carrying on or transaction of business of persons doing business in 2 or more states. The commission may employ such assistants, and incur such expenses as shall be necessary to carry out the provisions of this act. The commission shall publish annually a report containing its rulings and orders and it shall include such statistical information of a general character as it may deem of general interest. Unless in accordance with a judicial order, or as shall be required in the proper administration of this act, no member of the commission, or agent or employee thereof, or former member, agent or employee, shall divulge any facts or information obtained in connection with the administration of this act, and any person violating this provision shall be subject to the penalty provided in section 14 of this act. After the filing by a taxpayer of a return as required herein for the calendar year 1940, no proceeding shall be maintained against such taxpayer or the property of such taxpayer or his assigns for the enforcement of any tax or any penalty arising out of any prior law imposing a tax upon or with respect to intangible personal property, subject to tax under this act, of such taxpayer other than for the enforcement of a tax actually levied prior to the calendar year 1940.

[7.556(13)] Deficiency assessment; notice and hearing; payment and action by taxpayer to recover; injunction.

Sec. 13. Notice and hearing; appeal; injunction. If the commission after examining the return of any taxpayer determines that the taxpayer is indebted to the state by reason of the remittance accompanying such return, or if any person shall fail to make a return or pay the tax as required by this act, the commission shall give such taxpayer notice of the intention to levy such tax or deficiency and the reasons therefor. Such taxpayer may, if he so desires and serves notice thereof upon the commission within 20 days, demand a hearing on the question of the levy of such tax or deficiency. Thereupon the commission shall set a time and place for hearing and shall give the taxpayer reasonable notice thereof. The taxpayer shall be entitled to appear before the commission and be represented by counsel and present testimony and argument. After the hearing the commission shall render its decision in writing and, by order, levy any deficiency found by it to be due and payable.

If any taxpayer is aggrieved by any decision of the commission, he shall be required to pay the amount of taxes, interest and penalties found due by the commission and shall be permitted to bring an action in the circuit court in the county in which the situs or business of the intangible personal property which is subject to such taxes, interest and penalties, is situated, to recover the amount of the taxes, interest and penalties alleged to have been unlawfully levied upon him. Such action shall be conducted in accordance with the statutes and rules of procedure concerning actions at law.

In the event any taxpayer is found entitled to recover any sums paid pursuant to the orders of the commission as hereinbefore provided, such sums shall be paid from revenue received under the provisions of this act on order of the commission and warrant of the auditor general.

No injunction shall issue to stay proceedings for imposition or collection of any taxes levied under this act.

[7.556(14)] Violations; penalties.

Sec. 14. Offenses; penalties. It shall be unlawful for any person to refuse to make the return required by this act; or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this act; or for any person to aid or abet another in any attempt to evade the payment

of the tax, or any part thereof, imposed by this act; or for the president, vice-president, secretary or treasurer of any company or association to make or participate in the making of any false return, or any false statement in any return required in this act, with the intent to evade the payment of any tax hereunder. Any person wilfully violating any of the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than \$1,000.00 or imprisoned not exceeding 1 year in the county jail, or punished by both fine and imprisonment in the discretion of the court. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement, with the intent aforesaid, shall be guilty in the manner of perjury, and, on conviction thereof, shall be punished in the manner provided by law. Any person for whom a false return, or a return containing a false statement as aforesaid, shall be made with knowledge of its falsity, shall be guilty of a misdemeanor and may be punished by a fine of not more than \$1,000.00.

[7.556(15)] Appropriation. Sec. 15. There is hereby appropriated from the general fund of the state for the fiscal year ending June 30, 1940, the sum of \$100,000.00, and for the fiscal year ending June 30, 1941, the sum of \$100,000.00, to carry out the provisions of this act.

[7.556(16)] Catchline headings not part of act. Sec. 16. Catchline headings not part of act. The catchline headings of the sections of this act shall in no way be considered to be a part of the respective sections or of this act, but are inserted herein for the purpose of convenience.

[7.556(17)] Severing clause. Sec. 17. Severing clause. Should any provision or section of this act be held to be invalid for any reason, or should the tax imposed hereby be held invalid as to any item or items of property, such holding shall not affect the validity of any remaining portion of such section or of this act, it being the legislative intent that this act shall stand notwithstanding the invalidity of any such provision or section.

[7.556(18)] Repeal.

Approved June 21, 1939.